

ORDINANCE NO. 806

ENCROACHMENT ORDINANCE OF THE CITY OF LODI

THE CITY COUNCIL OF THE CITY OF LODI does ordain as follows:

PART I
GENERAL PROVISIONS AND DEFINITIONS

Section 1 - CONSTRUCTION. Unless the context otherwise requires, the definitions and general provisions set forth in this part govern the construction of this ordinance.

Section 2 - PUBLIC STREET. "Public Street" means the full width of the right of way of any road, street, lane or alley used by or for the general public, whether or not those roads, streets, lanes and alleys have been accepted as and declared to be part of the city system of public streets, except *streets* forming a part of the State Highway system.

Section 3 - RIGHT OF WAY. "Right of Way" means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for and dedicated to the use of the general public for street or highway purposes.

Section 4 - ENCROACH, ENCROACHMENT. "Encroach" includes going upon, over, under, or using any right of way in such a manner as to prevent, obstruct, or interfere with the normal use of that way, including the performance thereon of any of the following acts: (a) excavating or disturbing the right of way; (b) erecting or maintaining any post, sign, pole, fence, guard rail, wall, loading platform, or other structure on or over or under the right of way; (c) planting any tree, shrub, grass or other growing thing within the right of way; (d) placing or leaving on the right of way any rubbish, brush, earth or other material of any nature whatever; (e) constructing, placing, or maintaining on, over, under, or within the right of way any pathway, sidewalk, driveway, or other surfacing, any culvert, or other surface drainage or sub-surface drainage facility, any pipe, conduit, or cable; (f) traveling on the right of way by any vehicle or combination of vehicles or object of dimension, weight or other characteristic prohibited by law without a permit; (g) lighting or building a fire; (h) constructing, placing, planting or maintaining any structure, embankment, excavation, tree or other object adjacent to the right of way which causes or will cause an encroachment.

Section 5 - CITY. The word "City" as used herein means the City of Lodi.

Section 6 - DIRECTOR OF PUBLIC WORKS. "Director" means the Director of Public Works of the City of Lodi, California.

Section 7 - CITY COUNCIL. "City Council" means the City Council of Lodi, California.

Section 8 - PERMITTEE. "Permittee" means any person(s), firm, company, corporation, association, public agency, or organization that proposes to do work or encroach upon a public highway as herein defined and has been issued a permit for said encroachment by the Director. All obligations, responsibilities, and other requirements of the permittee as herein described, shall be binding on subsequent owners of the encroachment.

Section 9 - RIGHT OF LAWFUL USE. Any permit granted under this chapter shall be subject to the right of the City, or any other person or persons, firm, corporation, district or other body of persons entitled thereto, to use that part of the public highway for any purpose for which it may be lawfully used, and no part of the highway shall be unduly obstructed at any time.

Section 10 - EXCEPTIONS. This Ordinance shall not apply to any officer or employee of the City of Lodi in the discharge of his official duties, or to any work being performed by any person or persons, firm or corporation under contract with the City.

Section 11 - ACTS REQUIRING PERMIT. It shall be unlawful for any person(s), firm, company, corporation, association, public agency, or organization, without first obtaining a written permit, to encroach or to make or cause to be made any encroachment of any nature whatever within, upon, over or under the limits of any right of way in the incorporated territory of the City, or to make or cause to be made any alteration of any nature within, upon, over, or under such right of way; or to construct, put upon, maintain or leave thereon, or to cause to be constructed, put upon, maintained or left thereon, any obstruction or impediment of any nature whatever; or to remove, cut or trim trees thereon; or to set a fire thereon, or to place on, over or under such right of way any pipe line, conduit or other fixture; or to move over or cause to be moved over the surface of any right of way or over any bridge, viaduct, or other structure maintained by the City any vehicle or combination of vehicles or other object of dimension or weight prohibited by law or having other characteristics capable of damaging the right of

way, or to place any sign, structure, wall, culvert, or similar encroachment, or to make any excavation or embankment in such a way as to endanger the normal usage or the right of way.

Section 12 - NON-ACCEPTABLE PERMIT APPLICATIONS. No application will be approved nor permit issued for constructing or maintaining a loading platform upon or in the right of way of a public street or for erecting or maintaining therein or thereon a post, pole, column or structure for support for advertising signs.

Section 13 - EMERGENCY WORK AUTHORIZED. This Ordinance shall not prevent any person or persons, firm or corporation from maintaining any pipe or conduit lawfully on or under any public street, or from making excavation, as may be necessary for the preservation of life, or property when an urgent necessity therefor arises during the hours the offices of the City are closed, except that the person or persons, firm or corporation making an emergency use or encroachment on a public street shall apply for a permit therefor within one (1) calendar day after the offices of the City are again opened.

PART II PERMITS AND FEES

Section 20 - ISSUANCE OF WRITTEN PERMITS. The written permits required by this ordinance shall be issued by the Director, subject to conditions set forth in this chapter or required by law.

Section 21 - APPLICATION FOR PERMITS. The Director shall prescribe and provide a regular form of application for the use of any applicant for a permit required by this chapter. The application form shall contain space for the name, address and principal place of business of the applicant, together with such detail as in the judgment of the Director is necessary to establish the exact location, dimensions, duration, and purpose of the proposed use or encroachment.

Section 22 - PERMIT APPLICATION EXHIBITS. The applicant shall enclose with, attach or add to the application for a permit a map, plat, sketch, diagram or similar exhibit, and of a size and in such quantity as may be prescribed, on which shall be plainly shown any and all information necessary to locate, delineate, illustrate, or identify the proposed use or encroachment and the right of applicant to so use or encroach thereon.

Section 23 - LIABILITY FOR DAMAGES. Permittee shall be responsible for all liability imposed by law for personal injury or property damage proximately caused by work permitted and done by permittee under the permit, or proximately caused by failure on permittee's part to perform his obligations under said permit in respect to maintenance. If any claim of such liability is made against the City of Lodi, its officers, or employees, permittee shall defend, indemnify and hold them, and each of them, harmless from such claim insofar as permitted by law.

Section 24 - FEES. The schedule of fees will be those recommended by the Director and established and adopted by the City Council from time to time by resolution. Before a permit is issued the applicant shall deposit with the City cash or check, in a sufficient sum to cover the fee for issuance of the permit, charges for field investigation, and the fee for necessary inspection, all in accordance with schedule established and adopted by the City Council.

Public Utilities may, at the Director's option, make payment for the above charges as billed by the City instead of advance deposit as required above.

Section 25 - PERMIT TO MOVE CERTAIN VEHICLES OR OBJECT. Before a vehicle or combination of vehicles or object of weight or dimension or other characteristic prohibited by law without a permit is moved on any public right of way, a permit to do so must first be granted by the Director as set forth in specifications established by the Director, or as otherwise required by him.

Section 26 - TERM OF PERMIT - BEGINNING OF WORK. The permittee shall begin work or use authorized by permit issued pursuant to this ordinance within ninety (90) days from date of issuance, unless a different period is stated in the permit. If the work or use is not begun within ninety (90) days, or within the time stated in the permit, then the permit shall become void. A permit for continuing a use or maintaining an encroachment previously authorized shall be valid for a term of one (1) year from date of issuance, unless sooner terminated by discontinuance of the use, or removal of the encroachment, for which the permit was issued.

Section 27 - TERM OF PERMIT. The permittee shall complete the work or use authorized by a permit issued pursuant to this ordinance within the time and according to the terms specified in the permit. If the work is unduly delayed by the permittee and if the interest of the public reasonably so demands, the

Director shall have authority to complete the work or any portion thereof. The actual cost of such a work by the city plus 26 as an overhead charge shall be charged to and paid by the permittee or his surety.

Section 28 - DISPLAY OF PERMIT. The permittee shall keep any permit issued pursuant to this ordinance at the site of work, or in the cab of a vehicle when movement thereof on a public street is involved, and the permit must be shown to any authorized representative of the Director or law enforcement officer on demand,

A permit issued for continued use of maintenance of an encroachment may be kept at the place of business of the permittee or otherwise safeguarded during the term of validity, but shall be made available to an authorized representative of the Director or law enforcement officer within a reasonable time after demand therefor is made.

Section 29 - CHANGES IN PERMIT. No changes may be made in the location, dimension, character or duration of the encroachment or use as granted by the permit except upon written authorization of the Director. No permit shall be required for the continuing use of maintenance of encroachments installed by Public Utilities, or for changes therein or thereto whose such changes or additions require no excavation of the right of way.

PART III BONDS

Section 40 - SURETY BOND REQUIRED. Unless this part is waived in the permit and prior to the issuance of a permit, the applicant must file with the Director a bond equal to the cost plus twenty (20) per cent of the work required to be done in order to comply with all the terms and conditions of such permit as estimated by the Director.

Section 41 - CASH IN LIEU OF SURETY BOND. In lieu of a surety bond required by Section 40 of this ordinance, the applicant may deposit cash in the amount named in Section 40 to secure the performance of the terms and conditions of the permit and the compliance with the provisions of this ordinance.

Section 42 - ANNUAL BOND. As an alternative to the requirements of Section 40, the applicant may, upon approval of the Director, annually file with the Director a bond equal to the estimated costs plus twenty (20) per cent of the work required to be done in order to comply with all of the terms and conditions of permits issued during the year and this ordinance.

Section 43 - BOND FOR CONTINUING USE. An applicant for a permit for a use or encroachment which is to continue or remain within, under, or upon the right of way of a public highway beyond the time authorized for construction or installation shall file with the City Clerk a cash deposit or surety bond equal to the cost plus twenty (20) per cent in order to make the right of way safe and convenient for travel to the general public,

Section 44 - ADDITIONAL BOND OR CASH DEPOSIT. The Director may require an additional bond or cash deposit required by Sections 46-43 at any time when in his opinion the amount of the bond or cash deposit previously made is insufficient.

Section 45 - REQUIREMENTS OF BOND PROVISIONS. The aforesaid bonds shall be executed by the applicant or contractor doing work as principal and by a surety company authorized to do business in this state as a surety. The bond shall name the City as obligee and shall be conditioned as follows: (a) That each and all of the terms and conditions of the permit shall be fully performed and complied with to the satisfaction of the Director. (b) That each and all of the provisions of this ordinance are complied with.

An extension of time for performance of work may be granted by the Director, but no such extension of time shall be valid unless written and no such extension shall release any surety company upon any bond.

Section 46 - BOND PAYABLE TO THE CITY. Any bond or cash deposit required by the Director pursuant to this ordinance shall be payable to the City of Lodi. Upon satisfactory completion of all work authorized in the permit according to the terms of the permit and this ordinance, the bond or cash deposit shall be released. In the event of noncompliance, the City may deduct from the cash deposit the actual cost to the City plus 20 per cent of work done by the City pursuant to Section 28 of this ordinance before returning the deposit to the depositor. In the event of a bond having been posted, the City may proceed against the surety and principal for the actual cost to the City plus 20 per cent of work done by the City pursuant to Section 28 of this ordinance.

Section 47 - EXCLUSIONS. Cash deposits or bonds will not be required of any public utility or public agency which is authorized by law to establish or maintain any works or facilities in, under, or over any public street or right of way.

PART IV
REGULATIONS

Section 50 - ERECTION AND MAINTENANCE OF SAFETY PROVISIONS. The permittee in the conduct of the work, use, or maintenance of an encroachment authorized by a permit issued pursuant to this Ordinance shall provide, erect, and/or maintain such lights, barriers, warning signs, patrols, watchmen, and other safeguards as are necessary to protect the traveling public. Any omission on the part of the Director to specify in the permit what lights, barriers, or other protective measures or devices shall not excuse the permittee from complying with all requirements of law and appropriate regulations and ordinances for adequately protecting the safety of those using public streets.

A permittee making any excavation or erecting or leaving any obstruction within, under, or upon the right of way, or causing the same to be made, erected, or left, shall place and maintain lights at each end of the excavation or obstruction, at not more than fifty (50) foot intervals along the excavation or obstruction, from one-half hour before sunset of each day to one-half hour after sunrise of the next day, until the excavation is entirely refilled or the obstruction removed and the right of way made safe for use. In addition, reflectorized warning signs conforming to the requirements of the California Division of Highways shall be placed two-hundred (200) and four-hundred (400) feet from each excavation or obstruction, in such a position as to adequately warn public traffic.

The warning signs, lights and other safety devices shall conform to the requirements of Section 465.7 of the Vehicle Code and of any sign manual issued by the Department of Public Works of the State of California.

Section 51 - NOTIFICATION: BEGINNING OF WORK. Before beginning any work including excavation, construction of concrete sidewalks, curbs, gutters or driveway approaches, planting, trimming or removing trees, making, placing or causing an obstruction in the traveled way, the permittee shall notify the Director.

Before starting work on which an inspector is required, the permittee shall notify the Director twenty-four (24) hours in advance of beginning such work.

Section 52 - NOTIFICATION: COMPLETION OF WORK. The permittee shall upon completion of all work authorized in the permit, notify the Director. No work shall be deemed to be completed until notification of completion is given pursuant to this section and the work is accepted by the Director.

Section 53 - INTERFERENCE WITH USE. All work or use shall be planned and executed in a manner that will least interfere with the safe and convenient travel of the general public at the place where the work or use is authorized. Free and unobstructed access shall be provided to all mailboxes, fire hydrants, water gates, valves, manholes, drainage structures, and/or other public service structures and property as may be required for emergency use. Such public service structures or property shall not be removed or relocated without proper approval from the constituted authorities charged with their control and maintenance. The work area shall be confined so as not to obstruct roadways and walks unnecessarily. Temporary roadways, driveways, and walks for vehicles and pedestrians shall be constructed where required.

Section 54 - RESTORING OF STREET AND MAINTENANCE OF ENCROACHMENT. Upon completion of the work, acts or things for which the permit was issued, or when required by the Director, the permittee shall replace, repair or restore the public street at the place of work to the same condition existing prior thereto unless otherwise provided in the permit. The permittee shall remove all obstructions, impediments, material or rubbish caused or placed upon the right of way of the public street under the permit, and shall do any other work or perform any act necessary to restore the public street to a safe and usable condition.

After completion of all work, the permittee shall exercise reasonable care in inspecting and maintaining the area affected by the encroachment. For a period of one (1) year after the completion of the work the permittee shall repair and make good any injury or damage to any portion of the street which occurs as the result of work done under the permit, including any and all injury or damage to the street which would not have occurred had such work not been done. By the acceptance of the permit the permittee agrees to comply with the above. The permittee shall, upon notice from the Director, immediately repair any injury, damage or nuisance, in any portion of the right of way resulting from the work done under the permit. In the event the permittee fails to act promptly or should the exigencies of the injury or damage require repairs or replacement to be made before the permittee can be notified or can respond to notification, the City may, at its option, make the necessary repairs or replacements or perform the necessary work and the permittee shall be charged with all expenses incurred in the performance of said work.

Section 55 - RELOCATION OR REMOVAL OF ENCROACHMENTS. If any future construction, reconstruction, or maintenance work by the City on a public right of way requires the relocation, removal or abandonment of installations or encroachments in, on or under the public right of way, the permittee, owning, controlling, or maintaining such installations or encroachments shall relocate, remove or abandon the same at his sole expense; provided, however, that this provision shall apply to and remain in force and effect only so long as the right of way upon which such installations or structures are located shall be used for usual street purposes and not as a freeway, and this provision shall cease to apply when such street shall become a freeway. When removal, relocation or abandonment is required, the Director shall give said permittee a written demand specifying the installations or encroachment that must be removed, relocated or abandoned. If said permittee fails to comply with said instructions, the City may cause the removal, relocation or abandonment of the encroachment at the expense of the permittee.

Section 56 - STANDARDS, SUPERVISION AND INSPECTION. All work done under a permit issued pursuant to this Ordinance shall conform to specifications established by the Director, or in the absence of established specifications to recognized standards of construction and approved practices in connection with the work to be done. All work shall be done subject to the supervision of, and to the satisfaction of the Director.

Section 57 - SMALL PIPES. Utility services and other small diameter pipes or rigid conduits shall be jacked or otherwise forced underneath a paved surface. The paved surface of a road shall not be cut, trenched, or otherwise disturbed unless specifically authorized in the permit. No tunneling will be permitted except as specifically set forth in the permit.

Section 58 - MINIMUM COVER. The minimum cover over any and all pipes or conduits larger than two and a half (2½) inches installed within the right of way shall be three (3) feet of earth or imported materials, unless otherwise specified in the permit. Within the public street, the minimum cover of three (3) feet shall be measured from the surface, existing or planned. The Director is authorized to permit installation of pipes or conduits where three (3) feet of cover cannot be provided because of topography, structures, or other engineering necessity.

Section 59 - BACKFILLING. Backfilling of an excavation shall be in accordance with specifications established by the Director or as otherwise required by him, both as to material and method; and backfill shall not be placed in any excavation without compaction of the material used therein, the degree and method thereof to be to the satisfaction of the Director.

Section 60 - MOVEMENT OF VEHICLES. When authorized by a permit issued pursuant to this Ordinance to move a vehicle or combination of vehicles or load of dimension or weight in excess of that permitted by law, the permittee shall comply with the general law regulating travel over a public street, including posted signs or notices which limit speed or direction of travel, or weight which may be placed upon a structure or the width or height that may be moved thereon or thereover, or otherwise restrict or control travel on a public street. The permittee shall at all time conform to and abide by the practice and procedure necessary to make safe and convenient the travel of the general public, and to keep safe and preserve the public highway over and on which movement is being made. Any violation of this section shall cancel the permit issued to the permittee.

Section 61 - MAIL BOXES. All mail boxes must be placed in accordance with the rules and regulations of the United States Post Office Department, but no box shall be so placed within the road right of way as to endanger the life or safety of the traveling public. A permit is not required for the placing of mail boxes.

¹⁰⁴⁶ Section 62 - PLANTING TREES. The applicant for a permit to plant trees in the right of way of a public street shall show in his application the exact location of and the kind of tree to be planted. No change shall be made in either location of trees or in kind of trees without the approval of the Director.

The Director may refuse to issue a permit authorizing the planting of trees in the right of way of a public street when, in his judgment, the location as described in the application, or the nature of growth above or below ground of the kind of tree proposed, will impede or inconvenience travel on a public highway or unduly disturb the right of way thereof, or in any way impede construction or maintenance of necessary facilities.

Section 63 - HEDGES OR FENCES. No hedge, shrub, or other planting whatever, fence or similar structure, or earth, gravel, or any other material of any nature, except as provided in Section 70, shall be planted, erected, maintained or placed in a right of way without a permit.

No hedge, shrub, or other planting whatever, fence or similar structure, shall be maintained across any existing walkway in a sidewalk area or shoulder. The intent of this restriction is to keep free a walkway for pedestrians or other lawful public travel without interference by or with vehicular travel. No encroachment of any nature will be permitted or maintained which impedes, obstructs, or denies such pedestrian or other lawful travel within the limits of the right of way of a public street, or which impairs adequate sight distance for safe pedestrian or vehicular traffic.

Section 64 - MAINTENANCE OF HEDGES, PLANTINGS AND FENCES. The permittee or the owner of the adjacent property shall maintain the hedges, shrubs, walls, fences or similar structures erected for landscaping purposes in a neat and orderly condition at all times. If the encroachment is not maintained as specified in this ordinance, the Director may direct the permittee or property owner to remove the encroachment and restore the right of way to its former condition, at the expense of the permittee or property owner.

Section 65 - TRIMMING OR REMOVING TREES. Trimming of trees will be permitted only when and in the manner authorized by a permit issued pursuant to this Ordinance, in order that the shapeliness of the tree may be preserved.

An application for removal of a tree will be approved and permit issued only when a necessity for removal exists, and adjacent property owners concur, or when deemed necessary by the Director. When a tree is removed under authority of a permit, the entire stump shall be taken out for a distance of at least two (2) feet below the ground surface unless otherwise specified in the permit, and the hole backfilled and tamped. All debris from trimming or removal shall be removed from the site and the right of way restored to its former condition.

Section 66 - LAWN; NO PERMIT REQUIRED. Other provisions of this Ordinance notwithstanding, it is lawful for a person, firm, corporation or other body to plant and maintain a lawn of any grass, of a type not prohibited by other law, within the right of way of a public street, without a written permit. However, the lawn shall not extend into the traveled way of the public street nor into the drainage ditches, gutter or other drainage facilities.

The general public may not be denied the use of the planted area for pedestrian or other lawful travel. The City may use the planted area for any purpose whatever, and may issue a permit to any applicant to go thereon to perform work or otherwise encroach pursuant to this chapter. If the lawn is damaged or disturbed in the course of an authorized encroachment, it shall be removed and replaced by the permittee unless the permit specifically states otherwise.

Section 67 - MARKING OF STREETS, CURBS AND SIDEWALKS. It shall be unlawful for any person, without first obtaining a permit, to solicit, on a commercial or donation basis, to place, or maintain any number, figure, letter, carving, drawing, design, or other marking upon any street, sidewalk, or curb; except that markings for the purpose of identifying survey, utility or construction locations shall not be subject to this Ordinance.

Section 68 - MONUMENTS. Any monument of granite, concrete, iron or other lasting material set for the purpose of locating or preserving the lines and/or elevation of any public street or right of way, property subdivision, or a precise survey point or reference point shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission from the Director to do so, said permission to be granted in conformance with requirements as set forth in specifications established by the Director. Replacement of removed or disturbed monuments will be at the expense of the permittee.

Section 69 - GUTTER CONSTRUCTION BY DRIVEWAY APPROACHES. The Director shall have the power to require property owners to remove driveway approaches where they are an obstruction to the gutter and to reconstruct driveway approaches where drainage or other conditions are unsatisfactory.

Section 70 - REPLACING CURB WHERE DRIVEWAY NO LONGER USED. Where a curb has been broken to provide a driveway for a residence or a business and such driveway is no longer needed or used as a driveway, the owner of the property or owner or operator of the business shall replace the curb and repair any damage done to the sidewalk by use of such driveway. Such work shall be done in conformity with the requirements for the construction of curbs and sidewalks of the City of Lodi.

PART V
PROCEDURE AND RULES FOR APPEAL

Section 90 - BOARD OF ADJUSTMENT. Any person aggrieved by the refusal of a permit required by this Ordinance may appeal to the City Council. Administration of this Ordinance is hereby referred to the Director of the City of Lodi:

Section 91 - FINDINGS ON APPEAL. If the City Council finds all of the following to be true the permit shall be granted:

- (a) That the applicant will be substantially damaged by the refusal to grant the permit as requested.
- (b) That no other reasonable method of obtaining the desired results is available except as proposed by applicant.
- (c) That the granting of the permit will not be materially detrimental to the public interest, safety, health and welfare or injurious to other property.

This ordinance shall be published one time in the "Lodi News Sentinel," a newspaper of general circulation printed and published in the City of Lodi, and shall be in force and take effect thirty (30) days after its passage.

Approved this 15th day of December, 1965

Attest: *Beatrice Garibaldi*
BEATRICE GARIBALDI
City Clerk

Jerald Kirsten
Mayor of the City of Lodi

State of California)
County of San Joaquin) ss.

I, Beatrice Garibaldi, City Clerk of the City of Lodi, do hereby certify that the foregoing Ordinance No. 806 was introduced at a regular meeting of the City Council of the City of Lodi held December 1, 1965, and was thereafter passed, adopted and ordered to print at a regular meeting held December 15, 1965, by the following vote:

AYES : Councilmen Brown, Culbertson, Dow and Kirsten

NOES : None

ABSENT: Councilman Walton

I further certify that Ordinance No. 806 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.